IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5619 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PATEL CHELABHAI HEMCHANDBHAI - Petitioner(s)
Versus
COLLECTOR OF BANASKANTHA & ORS. - Respondent(s)

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Appearance :
SHRI JAYRAJ CHAUHAN for SHRI MUKUND M. DESAI for Petitioner(s).
SHRI N.D. GOHIL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1.
Office Report shows that Rule issued to Respondent(s) : 2/1 to 2/6 is not received back.
Respondent(s) : 3 is served, but, there is no representation.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/11/2006

ORAL JUDGMENT

By this Writ Petition, the petitioner seeks to challenge the correctness, validity and propriety of the order passed by the Additional Chief Secretary (Appeal),

Revenue Department, whereunder the petitioner's Case No.SRD/Land/Banaskantha/2/90 was rejected on 4th May, 1990.

2. Shorn of the details, facts for disposal of the present petition are that certain lands were given to respondent No.2 (since deceased) as "*Chakariyat*" land (service land), which he had sold by a registered deed to the present petitioner on 9th May, 1980. On an application by the petitioner, his name was mutated on 17th August, 1981 in the records of rights. On 3rd February, 1983, the Deputy Collector started certain proceedings probably under Section 203 of the Bombay Land Revenue Code and by his final order dated 30th September, 1983, he directed cancellation of the entry. The petitioner, being aggrieved by the said order, took up the matter in an appeal to the Collector, Banaskantha, who was pleased to dismiss the appeal on 15th February, 1984.

2.1 The bone of contention between the parties was that whether the parties would be governed by the Government Resolution of 1968, as submitted by the petitioner, or by the Government Resolutions dated 16th March, 1982 and 13th July, 1983, as contended by the State.

2.2 In the revision filed by the present petitioner, the Revisional Authority, that is, Special Secretary (Appeal), was pleased to remand the matter to the Collector for rehearing. This time again the Collector, by his Order dated 8th November, 1989 dismissed the appeal and as the revision, at the instance of the present petitioner, proved futile, he is before this Court.

3. Shri Chauhan, learned Counsel for the petitioner, after taking me through the Order dated 4th May, 1990 (Annexure-C) passed by the Additional Principal Secretary (Appeal), Revenue Department, Gujarat, submits that from perusal of paragraph-1, it would appear that various contentions were raised by the present petitioner, including the submission that on the date of transfer, that is, 9th May, 1980, the Government Resolutions dated 16th March, 1982 and 13th July, 1983, were not in existence, therefore, the parties' rights could not be decided on the basis of such resolutions, which came into existence subsequent to the event. He submits that from a perusal of the order passed by the learned Revisional Authority, it would clearly appear that barring considering the interest of the downtrodden people or persons, who are economically weak and socially backward, the Secretary has not considered anything.

According to him, the order passed by the Revisional Authority is *per se* illegal and shows non application of mind.

4. Shri N.D. Gohil, learned Counsel for the State, submits that the order passed by the authority is in accordance with law and if the authority has confirmed the order of the Collector, then, one can find reasons in the order passed by the Collector.

5. After going through paragraph-1 and other contentions raised by the petitioner, I must hold that the basic dispute required to be decided by the Revisional Authority was that which of the Government Resolution would govern the rights of the parties. True it is, that the Government had issued Circulars/Resolutions with a laudable object, but, issuance of a Circular or making of a Government Resolution would not undo what has already been done unless a retrospective effect is given to such Circulars or Resolutions. In the present case, the Revisional Authority barring considering the reasons for which the land was allotted to respondent No.2 has not considered anything. The order cannot be termed to be legal and valid order. The error is apparent on the face of the record. The order passed by the Revisional Authority

deserves to and is, accordingly, quashed. The matter is remanded back to the Revisional Authority with a specific direction that it shall give proper opportunity of hearing to the parties and shall decide the matter in accordance with law by a speaking order. If the petitioner proposes to file written arguments to avoid any controversy, then, the same would be taken on records and the authority would be obliged to consider every argument raised by the petitioner.

6. The petition is allowed to the extent indicated above. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**